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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/090,206

03/01/2002

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007287.00007

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22907 7590 07/17/2009

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EXAMINER

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ART UNIT

PAPER NUMBER

2424

MAIL DATE

DELIVERY MODE

07/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/090,206
Filing Date: March 01, 2002
Appellant(s): KOHNE, BRIAN

Mark E. Wilinski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 13, 2009 appealing from the
Office action mailed January 12, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

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US 2006/0010469 A1	Reynolds et al	01/2006
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5,812,123	Rowe et al	09/1998
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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds et al (US 2006/0010469 and hereafter referred to as “Reynolds”) in view of Rowe et al (US 5,812,123 and hereafter referred to as “Rowe”).

Regarding Claims 1, 8 and 15, Reynolds discloses a method, a computer readable medium, a method, a computer readable medium storing instructions that when executed by a processor, cause the process to perform the method (Page 8, paragraphs 0080, 0082, 0084, 0086, and system (Figure 4, Figure 5, Figure 1) comprising:

- a first unit to receive input identifying a first broadcasted program (Figure 4, 22, 28, Figures 2a-d, 22, Figure 3a, Figure 3b);

- a second unit to select content (Page 7, paragraph 0076, Figure 4, 40), based on the input, to be displayed in a background area of an interactive programming guide (Figures 3a, 3b, Figures 6, 7, 8a, Pages 8-9, paragraphs 0087, 0089-0091).

A fourth unit configured to display the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information to the first broadcasted program (Pages 8-9, paragraphs 0087, 0089-0092, Figure 5, 42). Reynolds is silent on a third unit

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determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and a fourth unit, responsive to determining the that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the electronic program guide. In analogous art, Rowe discloses a method, a computer readable medium, a method, a computer readable medium that perform operations, and system comprising: a first unit to receive input identifying a first broadcasted program (Figure 1, 32); and a second unit to select content (Figure 1, 40), based on the input, to be displayed in a background area of an interactive programming guide (Figures 2-4, 6, 92). Rowe discloses a third unit determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold (Column 10, lines 35-40, Figure 1, 32, 34); and a fourth unit, responsive to determining the that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the electronic program guide (Column 10, lines 18-40, Figure 1, 38, 34). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Reynolds to include a third unit determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold (Column 10, lines 35-40, Figure 1, 32, 34); and a fourth unit, responsive to determining the that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the electronic program guide (Column 10, lines 18-40, Figure 1, 38, 34) as taught by Rowe in

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order to prevent rapid and unnecessary updates of the program display if the user is simply scrolling through the program guide (Column 10, lines 38-40) as disclosed by Rowe.

Furthermore, in *KSR International Co. Teleflex Inc.*, 127 S.Ct 1727, No. 04-1350, slip. op. at 12 (2007), the Court found that if all the claimed elements are known in the prior art then one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yield predictable results to one of ordinary skill in the art at the time of the invention.

Regarding Claim 23, Reynolds discloses a method, comprising:

receiving input identifying a first broadcasted program (Figure 4, 22, 28, Figures 2a-d, 22, Figure 3a, Figure 3b, Page 8, paragraph 0090);

determining whether a background content selection feature for a hybrid guide to supplement interactive features of the passive guide is enabled by user indication (Page 8, paragraph 0089),

in response to determining the background selection feature is enabled (Page 8, paragraph 0089), selecting content (Page 7, paragraph 0076, Figure 4, 40), based on the identified first program, to be displayed in a background area of an interactive programming guide (Figures 3a, 3b, Figures 6, 7, 8a, 8b, Pages 8-9, paragraphs 0087, 0089-0092); and

displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information to

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the first broadcasted program (Pages 8-9, paragraphs 0087, 0089-0091, Figure 5, 42). Reynolds is silent on determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the electronic program guide. In analogous art, Rowe discloses a method, that perform operations, comprising: a first unit to receive input identifying a first broadcasted program (Figure 1, 32); and a second unit to select content (Figure 1, 40), based on the input, to be displayed in a background area of an interactive programming guide (Figures 2-4, 6, 92). Rowe discloses determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold (Column 10, lines 35-40, Figure 1, 32, 34); and responsive to determining the that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the electronic program guide (Column 10, lines 18-40, Figure 1, 38, 34). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Reynolds to include determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold (Column 10, lines 35-40, Figure 1, 32, 34); and responsive to determining the that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the electronic program guide (Column 10, lines 18-40, Figure 1, 38, 34) as taught by Rowe in order to prevent rapid and unnecessary

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updates of the program display if the user is simply scrolling through the program guide (Column 10, lines 38-40) as disclosed by Rowe.

Furthermore, in *KSR International Co. Teleflex Inc.*, 127 S.Ct 1727, No. 04-1350, slip. op. at 12 (2007), the Court found that if all the claimed elements are known in the prior art then one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yield predictable results to one of ordinary skill in the art at the time of the invention.

Regarding Claims 2, 9 and 16, Reynolds and Rowe disclose all the limitations of Claims 1, 8 and 15 respectively. Reynolds discloses that the first broadcasted program is selected from a set of broadcasted programs displayed in the interactive programming guide (Page 9, paragraph 0098).

Regarding Claims 3, 10 and 17, Reynolds and Rowe disclose all the limitations of Claims 1, 8 and 15 respectively. Reynolds discloses that the first broadcasted program is selected by a user of the interactive programming guide (Pages 8-9, paragraphs 0088-0090, 0091 0098, Figures 3a, 3b).

Regarding Claims 4, 11 and 18, Reynolds and Rowe disclose all the limitations of Claims 1, 8 and 15 respectively. Reynolds discloses that the content includes an image from the first broadcasted program (Page 9, paragraph 0092).

Regarding Claims 5, 12 and 19, Reynolds and Rowe disclose all the limitations of Claims 1, 8 and 15 respectively. Reynolds discloses the content

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includes information about a subject associated with the first broadcasted program (Pages 8-9, paragraphs 0088-0090, 0091-0098, Figures 3a, 3b).

Regarding Claims 6, 13 and 20, Reynolds and Rowe disclose all the limitations of Claims 1, 8 and 15 respectively. Reynolds discloses that the content is selected based on a category of the first broadcasted program (Page 2, paragraph 0014, Figure 8b, Figure 12).

Regarding Claims 7 and 14, Reynolds and Rowe disclose all the limitations of Claims 6 and 13 respectively. Reynolds discloses the content includes information about a subject associated with the category (Figure 8b, Figure 12, Figure 13).

Regarding Claim 21, Reynolds and Rowe disclose all the limitations of Claim 15. Reynolds discloses the selected content is user generated or as the user selects or highlights a program the selected content is displayed based on the highlighting of the program (Pages 8-9, paragraphs 0089-0092, 0098).

Regarding Claim 22, Reynolds and Rowe disclose all the limitations of Claim 1. Reynolds discloses the first broadcasted program corresponds to a sporting event and the selected content including one or more sporting event scores for the same sport as the sporting event or selecting a football talk show which provides more information including sports scores (Page 9, paragraph 0094-0096).

Regarding Claim 24, Reynolds and Rowe disclose all the limitations of Claim 23. Reynolds disclose determining whether a background selection feature is enabled further comprises determine whether content is available for

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selection or based on if the user selects hybrid guide for selection of the content of the overlay (Pages 8-9, paragraphs 0087, 0089-0091).

(10) Response to Argument

A. Rejection of Claims 1-7 and 22

1. Independent Claim 1

The appellant recites limitations of Claim 1: "determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program." (Page 4).

The appellant recites that the Office has continued to disregard passages in Reynolds that teach away from the above noted features recited in claim1 (Page 4). The appellant argues that Reynolds at paragraphs 0003-0004 describes the frustration a user experiences with respect to passive guides due to being forced to wait until a list of program listings scrolls to display listings for a channel or time that a user is interested and users of passive guides have no way controlling listings (Pages 4-5). Therefore, the appellant further argues that there were no reasons to modify Reynolds to include the limitation recited above because the features counter the purpose of Reynolds (Page 5). The appellant

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then argues that the Office impermissibly treating Reynolds as if those two paragraphs did not exist when those two paragraphs clearly define the intended purposes and goals of Reynolds (Page 5).

The appellant argues that the paragraphs 0003-0004 of Reynolds improperly conflates the modes of analysis associated with section 102 and section 103 rejection as the alleged anticipatory prior art is nonanalogous art or teaches away from the invention (Page 5). The appellant then argues that a section 103 rejection requires a modification to have been obvious to one of ordinary skill in the art at the time the invention was made (Page).

The appellant further argues that a modification cannot be made to reference that frustrates the references' intended purpose MPEP § 2143.01. The appellant argues that claim 1 is rejected under section 103 yet improperly uses a section 102 mode of analysis (Page 5).

The appellant argues that claim 1 recites displaying the selected content in the background area of the interactive programming guide wherein the selected content is overlapped by information related to the first broadcasted program (Page 6) that Reynolds merely describes a hybrid guide using an overlay technique to overlay program listings display area, text display area, graphic display area, video display area or interactive feature areas onto a passive guide display screen (Page 6). The appellant argues even assuming that the passive guide constitutes a background area, nowhere does Reynolds teach or suggest displaying content selected in the interactive guide in the passive guide display screen wherein the selected content is overlapped by

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information related to a first broadcasted program- paragraph 0088 (Page 6).

Thus the passive guide display would not change based on what is selected in the interactive guide (Page 6). The appellant argues that Rowe is similarly deficient.

Response to Section A. 1 Arguments

In response to the arguments, the examiner respectfully disagrees. The appellant is focusing on two paragraphs of the background of the Reynolds which describes the frustrations of passive guide users (Page 1, paragraph 0003, 0004). Reynolds discloses the invention relate to interactive television program guides with passive content (Page 1, paragraph 0002). Reynolds further discloses that hybrid passive interactive program guide have been proposed to allow the video portion of passive guides with the interactive listings to provide the benefits of interactive systems with passive guide content (Page 1, paragraph 0006) and it is an object of the invention to provided a hybrid passive interactive television program guide (Page 1, paragraph 0007). The appellant's arguments that the Office disregards two paragraphs of the invention is not persuasive as the Office considered these two paragraphs as the reason why Reynolds invention improved the previous passive guide system with an interactive guide using passive elements. Therefore, any modification to the passive guide with interactive guide elements does not frustrate the intended purpose of Reynolds as its purpose is to provide an interactive guide with passive guide elements.

The appellant's argument that Reynolds merely discloses a passive guide and that the passive guide is not an interactive guide is not persuasive. Reynolds discloses a hybrid guide which includes interactive and passive elements in order to allow users to interact with certain elements (Pages 8-9, paragraphs 0087, 0089-0092) therefore the hybrid guide is an interactive guide. The appellant's arguments for section 102 and that the rejection was written in an improper 102 manner is unclear and confusing. The Office's rejection included a primary reference that was combined with an analogous secondary reference that would have been obvious to one of ordinary skill in the art. The rejection clearly defined elements used to reject limitations from both references. The rejection is clearly a section 103 rejection under a section 103 heading. The references both deal with interactive electronic program guides. The motivations to combine Rowe with Reynolds are to prevent rapid and unnecessary updates of the program display if the user is simply scrolling through the program guide (Column 10, lines 38-40) as disclosed by Rowe and to provide an aesthetically pleasing guide for the user to use. There is proper motivation to combine as the Rowe's invention of an interactive guide is analogous to Reynolds's invention of an interactive guide (as defined as a hybrid guide with interactive guide elements). Therefore, the combination of Rowe does not frustrate the intended purpose of Reynolds.

Reynolds discloses a user highlighting or selecting (Figure 6, 151) a first broadcasted program (Pages 8-9, paragraphs 0089-0091) and selecting content including any elements of the passive guide, based on the input of the highlighted program to be interactive when the user indicates a desire to access interactive features in response to selecting a program listing (Page 8, paragraph 0089), to be displayed in a background area or the passive guide which is behind the interactive guide elements as the interactive guide overlays the passive guide (Pages 8-9, paragraphs 0090-0091). Reynolds discloses determining the first broadcasted program is selected (Pages 8-9, paragraph 0090). The claim does not state what the selected content is. Reynolds discloses the selected content, to be overlapped, is passive guide elements (Pages 8-9, paragraph 0090). The claim language requires selected content to be overlapped. Reynolds discloses displaying content selected based on the input (Pages 8-9, paragraph 0090) wherein the selected content is overlapped by information related to a first broadcasted program or the interactive guide elements in relation to the first broadcasted program overlays the selected content or the passive guide elements of the passive guide (Pages 8-9, paragraphs 0087, 0089-0092).

Rowe is not used to disclose selected content to be overlapped limitations as argued by the appellant. Rowe is used to teach displaying elements on the guide if an element is selected a time greater than a predetermined threshold based on if an element of the guide is selected longer than a short default time out period (Column 10, lines 35-40, Figure 1, 32, 34); and if the selecting is at a time greater than the predetermined threshold or the time out period expires,

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displaying the selected content in the electronic program guide (Column 10, lines 18-40, Figure 1, 38, 34).

Therefore, the combination meets the limitations: "determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program."

Furthermore, in *KSR International Co. Teleflex Inc.*, 127 S.Ct 1727, No. 04-1350, slip. op. at 12 (2007), the Court found that if all the claimed elements are known in the prior art of Reynolds and Rowe as discussed above then one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yield predictable results to one of ordinary skill in the art at the time of the invention.

2. Dependent Claims 2-7 and 22

The appellant argues that Claims 2-7 and 22 depend from claim 1 and therefore allowable for the same reasons.

In response to the arguments, please see response to section A.1 arguments.

B. Rejection of Claims 8-14

1. Independent Claim 8

The appellant argues that Claim 8 features are allowable over the applied references for substantial similar reasons to those of claim 1.

In response to the arguments, please see Response to Section A.1 arguments.

2. Dependent Claims 9-14

The appellant argues that Claims 9-14 depend from claim 8 and therefore allowable for the same reasons.

In response to the arguments, please see Response to Section A.1 arguments and response to section B.1 arguments.

C. Rejection of Claims 15-21

1. Independent Claim 15

The appellant argues that Claim 15 features are allowable over the applied references for substantial similar reasons to those of claim 1.

In response to the arguments, please see Response to Section A.1 arguments.

2. Dependent Claims 16-21

The appellant argues that Claims 16-21 depend from claim 15 and therefore allowable for the same reasons.

In response to the arguments, please see Response to Section A.1 arguments and response to section C.1 arguments.

D. Rejection of Claims 23 and 24

1. Independent Claim 23

The appellant argues that Claim 23 features are allowable over the applied references for substantial similar reasons to those of claim 1.

In response to the arguments, please see Response to Section A.1 arguments.

2. Dependent Claim 24

The appellant argues that Claim 24 depends from claim 23 and therefore allowable for the same reasons.

In response to the arguments, please see Response to Section A.1 arguments and response to section D.1 arguments.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Farzana Hossain/

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